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**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

**STEPHEN RICHARD LAUTERBACH, M.D.**  
161 RIVERSIDE DRIVE SUITE 105  
BINGHAMTON, NY 13905-4177

PHYSICIAN'S AND SURGEON'S CERTIFICATE NO. A74720

**RESPONDENT.**

Case No. 800-2017-029728

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

On June 5, 2017, an employee of the Medical Board of California (Board) sent by certified mail a copy of Accusation and Petition to Revoke Probation No. 800-2017-029728, Statement to Respondent, Notice of Defense in blank, copies of the relevant sections of the California Administrative Procedure Act as required by sections 11503 and 11505 of the Government Code, and a request for discovery, to Stephen Richard Lauterbach, M.D. (Respondent) at his address of record with the Board, which was and is, 161 Riverside Drive Suite 105, Binghamton, NY 13905-4177. United States Post Office records show that the package could not be delivered. (Accusation and Petition to Revoke Probation package, proof of service, USPS printout, Exhibit Package, Exhibit 1<sup>1</sup>).

On June 27, 2017 an employee of the Attorney General's Office sent by certified mail, addressed to Respondent at his address of record, and to the attorney who represented him in connection with the recent proceedings involving his New York medical license, a Courtesy Notice of Default, advising Respondent of the service Accusation and Petition to Revoke Probation, and providing him with an opportunity to file a Notice of Defense and request relief from default. The package sent to Respondent's address of record was returned marked "Attempted- Not Known Unable to Forward"; the green certified receipt for the package sent to

<sup>1</sup> The evidence in support of this Default Decision and Order is submitted herewith as the "Exhibit Package."

1 Respondent's New York attorney was signed as delivered on July 6, 2017. (Exhibit Package,  
2 Exhibit 2, Courtesy Notice of Default, proof of service, return envelope, return receipt, USPS  
3 tracking information).

4 Respondent has not responded to service of the Accusation and Petition to Revoke  
5 Probation or the Courtesy Notice of Default. He has not filed a Notice of Defense. As a result,  
6 Respondent has waived his right to a hearing on the merits to contest the allegations contained in  
7 the Accusation and Petition to Revoke Probation.

## 8 FINDINGS OF FACT

### 9 I.

10 Kimberly Kirchmeyer is the Executive Director of the Board. The charges and allegations  
11 in the Accusation and Petition to Revoke Probation were at all times brought and made solely in  
12 the official capacity of the Board's Executive Director.

### 13 II.

14 On May 31, 2001, Physician's and Surgeon's Certificate No. A74720 was issued by the  
15 Board to Stephen Richard Lauterbach, M.D. The certificate is in delinquent status, having  
16 expired on November 30, 2016, and is suspended by virtue of an Order issued on April 14, 2017  
17 pursuant to Business and Professions Code section 2310(a).

18 Prior disciplinary action was taken against the certificate as follows: On November 15,  
19 2012, an Accusation was filed in Case No. 16-2012-223707; on April 10, 2013, a Decision  
20 became effective under which Respondent's certificate was revoked, stayed, subject to five years  
21 probation with terms and conditions. (Exhibit Package, Exhibit 3, license certification).

### 22 III.

23 On June 5, 2017, Respondent was duly served with an Accusation and Petition to Revoke  
24 Probation, alleging causes for discipline against Respondent and cause for revocation of  
25 probation. A courtesy Notice of Default was thereafter served on Respondent. Respondent failed  
26 to file a Notice of Defense.

27 ///

IV.

The allegations of the Accusation and Petition to Revoke Probation are true as follows:

On October 6, 2016, the New York State Board for Professional Medical Conduct issued a Consent Order to resolve a pending Statement of Charges regarding Respondent's New York medical license. Under the terms of the Consent Order, Respondent's New York license was suspended for an indefinite period, but no less than 18 months. The basis for the Consent Order and license suspension was Respondent's consumption of alcohol, in violation of his New York probation. (Copies of the Consent Order and the Statement of Charges issued by the New York Board are attached to the Accusation and Petition to Revoke Probation, Exhibit Package, Exhibit 1).

The Medical Board's April 10, 2013 Decision required Respondent to, among other things, abstain from drugs and alcohol, submit to biological fluid testing, undergo an evaluation if requested, have a practice monitor, and not engage in solo practice. The basis for the 2013 Decision was Respondent's history of substance abuse. The Decision contained a tolling provision under which periods of residence or practice outside California would not apply to the reduction of the probationary period: Respondent was required to obey all federal, state and local laws and all rules governing the practice of medicine in California; he was required to comply with the Board's probation unit, which included the maintenance of a current and renewed California physician's and surgeon's license; he was required to abstain from drugs and alcohol; and, required to submit to biological fluid testing. The 2013 Decision further provided that if Respondent violated probation in any respect, the Board could revoke probation and carry out the disciplinary order that was stayed., (Exhibit Package, Exhibit 4, April 10, 2013 Decision and Order in Case No. 16-2012-223707).

**DETERMINATION OF ISSUES**

I.

Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action of the New York Board for Professional Medical Conduct constitute cause for discipline within the

1 meaning of Business and Professions Code sections 2305 and 141(a).

2 II.

3 Pursuant to the foregoing Findings of Fact, Respondent's alcohol relapse, failure to obey  
4 laws, and failure to maintain a current and renewed physician's and surgeon's certificate  
5 constitute cause to revoke his existing probation.

6 **DISCIPLINARY ORDER**

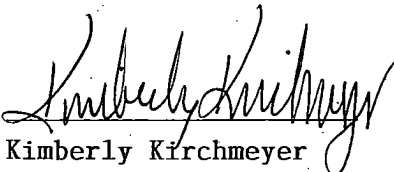
7 Physician's and Surgeon's certificate No. A74720 issued to Stephen Richard Lauterbach,  
8 M.D. is hereby **REVOKED**.

9 Respondent shall not be deprived of making a request for relief from default as set forth in  
10 Government Code section 11520(c) for good cause shown. However, such showing must be  
11 made in writing by way of a motion to vacate the default decision and directed to the Medical  
12 Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within seven  
13 (7) days of the service of this Decision.

14 This Decision will become effective August 25,, 2017

15 It is so ordered on July 28,, 2017.

16  
17 MEDICAL BOARD OF CALIFORNIA  
18 DEPARTMENT OF CONSUMER AFFAIRS  
19 STATE OF CALIFORNIA

20 By   
21 Kimberly Kirchmeyer  
22 Executive Director  
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1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
3 State Bar No. 116564  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5544  
5 Facsimile: (415) 703-5480  
E-mail: Janezack.simon@doj.ca.gov  
6 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO June 5, 2017  
BY: [Signature] ANALYST

7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
11 Revoke Probation Against:

Case No. 800-2017-029728

12 **STEPHEN RICHARD LAUTERBACH, M.D.**  
13 161 Riverside Drive, Suite 105  
Binghamton, NY 13905-4177

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

14 Physician's and Surgeon's Certificate  
No. A74720,

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke  
21 Probation solely in her official capacity as the Executive Director of the Medical Board of  
22 California, Department of Consumer Affairs (Board).

23 2. On May 31, 2001, Physician's and Surgeon's Certificate No. A74720 was issued by  
24 the Board to Stephen Richard Lauterbach, M.D. (Respondent). The certificate is in delinquent  
25 status, having expired on November 30, 2016, and is suspended by virtue of an Order issued on  
26 April 14, 2017 pursuant to Business and Professions Code section 2310(a).

27 Prior disciplinary action was taken against the certificate as follows: On November 15,  
28 2012, an Accusation was filed in Case No. 16-2012-223707; on April 10, 2013, a Decision

1 became effective under which Respondent's certificate was revoked, stayed, subject to five years  
2 probation with terms and conditions.

3 3. The 2013 Decision required Respondent to, among other things, abstain from drugs  
4 and alcohol, submit to biological fluid testing, undergo an evaluation if requested, have a practice  
5 monitor, and not engage in solo practice. The basis for the 2013 Decision was Respondent's  
6 history of substance abuse. The Decision contained a tolling provision under which periods of  
7 residence or practice outside California would not apply to the reduction of the probationary  
8 period, although specific terms of the Decision were not subject to the tolling provision.

### 9 JURISDICTION

10 4. This Accusation and Petition to Revoke Probation is brought before the Board, under  
11 the authority of the following laws. All section references are to the Business and Professions  
12 Code unless otherwise indicated.

13 5. Section 141 of the Code states:

14 "(a) For any licensee holding a license issued by a board under the jurisdiction of the  
15 department, a disciplinary action taken by another state, by any agency of the federal  
16 government, or by another country for any act substantially related to the practice  
17 regulated by the California license, may be a ground for disciplinary action by the  
18 respective state licensing board. A certified copy of the record of the disciplinary  
19 action taken against the licensee by another state, an agency of the federal  
20 government, or another country shall be conclusive evidence of the events related  
21 therein.

22 "(b) Nothing in this section shall preclude a board from applying a specific statutory  
23 provision in the licensing act administered by that board that provides for discipline  
24 based upon a disciplinary action taken against the licensee by another state, an agency  
25 of the federal government, or another country."

26 6. Section 2305 of the Code provides, in part, that the revocation, suspension, or other  
27 discipline, restriction or limitation imposed by another state upon a license to practice medicine  
28 issued by that state, that would have been grounds for discipline in California under the Medical  
Practice Act, constitutes grounds for discipline for unprofessional conduct.

### 29 FIRST CAUSE FOR DISCIPLINE

30 (Discipline, Restriction, or Limitation Imposed by Another State)

31 7. On October 6, 2016, the New York State Board for Professional Medical Conduct  
32 (New York Board) issued a Consent Order to resolve a pending Statement of Charges regarding

1 Respondent's New York medical license. Under the terms of the Consent Order, Respondent's  
2 New York license was suspended for an indefinite period, but no less than 18 months. The basis  
3 for the Consent Order and license suspension was Respondent's consumption of alcohol, in  
4 violation of his New York probation. Copies of the Consent Order and the Statement of Charges  
5 issued by the New York Board are attached as Exhibit A.

6 8. Respondent's conduct and the action of the New York Board set forth in paragraph 7,  
7 above, constitute unprofessional conduct and cause for discipline within the meaning of section  
8 2305 and conduct subject to discipline within the meaning of section 141.

### 9 CAUSE TO REVOKE PROBATION

10 9. The Medical Board of California's 2013 Decision contained a number of terms and  
11 conditions that were not subject to the tolling provision: the 2013 Decision required Respondent  
12 to obey all federal, state and local laws and all rules governing the practice of medicine in  
13 California; he was required to comply with the Board's probation unit, which included the  
14 maintenance of a current and renewed California physician's and surgeon's license; he was  
15 required to abstain from drugs and alcohol; and, required to submit to biological fluid testing.  
16 The 2013 Decision further provided that if Respondent violated probation in any respect, the  
17 Board could revoke probation and carry out the disciplinary order that was stayed.

18 10. In December 2016, Respondent informed the Board's probation staff that he had  
19 relapsed by consuming alcohol, which had resulted in the suspension of his New York license. In  
20 addition, Respondent's California physician's and surgeon's certificate expired on November 30,  
21 2016, and has not been renewed. Respondent has therefore violated the terms of the 2013  
22 Decision, and has subjected his probation to revocation.

### 23 PRAYER

24  
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Medical Board of California issue a decision:

27 1. Revoking the probation granted by the Medical Board of California in Case  
28

1 No. 16-2012-223707, and revoking or suspending Physician's and Surgeon's Certificate Number  
2 A74720, issued to Stephen R. Lauterbach, M.D.;

3 2. Revoking, suspending or denying approval of Respondent's authority to supervise  
4 physician assistants and advanced practice nurses;

5 3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation  
6 monitoring; and

7 4. Taking such other and further action as deemed necessary and proper.

8  
9 DATED: June 5, 2017

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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# Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

October 11, 2016

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Stephen Richard Lauterbach, M.D.

Re: License No. 201398

Dear Dr. Lauterbach:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-332. This order and any penalty provided therein goes into effect October 18, 2016.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

Henry Spector, M.D.  
Acting Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Catherine A. Gale, Esq.  
Gale, Gale & Hunt, LLC  
PO Box 6527  
Syracuse, New York 13217

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

STEPHEN RICHARD LAUTERBACH, M.D.

BPMC No. 16-332

CONSENT  
ORDER

Upon the application of (Respondent) STEPHEN RICHARD LAUTERBACH, M.D. in  
the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and

it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board,  
either

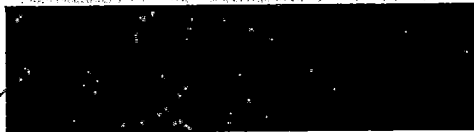
by mailing of a copy of this Consent Order, either by first class mail to Respondent at  
the address in the attached Consent Agreement or by certified mail to Respondent's  
attorney, OR

upon facsimile transmission to Respondent or Respondent's attorney,

whichever is first.

SO ORDERED.

DATE: 10/06/2016

  
ARTHUR S. HENGERER, M.D.  
Chair  
State Board for Professional Medical Conduct

1

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
STEPHEN RICHARD LAUTERBACH, M.D.

CONSENT  
AGREEMENT

STEPHEN RICHARD LAUTERBACH, M.D., represents that all of the following statements are true:

That on or about November 14, 1995, I was licensed to practice as a physician in the State of New York, and issued License No. 201398 by the New York State Education Department.

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I admit guilt to the specification in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for an indefinite period but no less than 18 months. I shall be subject to a condition that I comply with attached Exhibit "C" ("Requirements for Closing a Medical Practice Following Medical License Revocation, Surrender, Limitation or

Suspension." During the period of suspension, I shall be precluded from reliance upon my license to practice medicine to exempt me from the license, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated, or certified by the Board of Regents, Department of Education, Department of Health or the Department of State. Upon compliance with all the conditions of this Consent Order I may petition the Board for a Modification Order staying the indefinite suspension of my license.

I understand and agree:

That any Modification Order the Board may issue, in the exercise of its reasonable discretion, may include terms of probation, and/or further conditions on my practice.

That the Board will exercise its reasonable discretion upon my petition for a modification Order through a Committee on Professional Conduct after a proceeding in which I have met a burden of proof and persuasion, as further set forth in attached Exhibit "B";

That the Committee's exercise of discretion shall not be reviewable by the Administrative Review Board; and

I further agree that the Consent Order shall impose the following conditions:

- That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and
- That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law §6502 including, but not limited to, the

requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

- That Respondent shall remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent

remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

- That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully

complied with and satisfied the requirements of the Order, regardless of tolling; and

- That Respondent shall cooperate fully with OPMC in its administration and enforcement of this Consent Order and in its investigation of all matters concerning Respondent. Respondent shall respond promptly to all OPMC requests for written periodic verification of Respondent's compliance with the terms of this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, and shall promptly provide OPMC with all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

If I am charged with professional misconduct in future, I hereby stipulate and agree that this Application and Consent Order, and/or related Modification Orders, shall be admitted into evidence in that proceeding as part of the Department's case-in-chief, at the sole discretion of the Department.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict

confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. This Consent Order, this Consent Agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.



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I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE

9/28/16

  
STEPHEN RICHARD LAUTERBACH, M.D.  
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE:

9/28/2016  
CATHERINE A. GALE, ESQ.  
Attorney for Respondent

DATE:

9/29/16  
DAVID W. QUIST  
Associate Attorney  
Bureau of Professional Medical Conduct

DATE:

10/5/16  
KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

EXHIBIT "A"

1. The following is a list of the names of the persons who have been identified as having been in contact with the subject of this investigation, and the dates of such contact.

NEW YORK STATE DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

STEPHEN RICHARD LAUTERBACH, M.D.

STATEMENT  
OF  
CHARGES

STEPHEN RICHARD LAUTERBACH, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 14, 1995, by the issuance of license number 201398 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 5, 2012, Respondent entered into a Consent Agreement with the New York State Board of Professional Medical Conduct, which resulted in a Consent Order ("Order") which became effective on or about April 26, 2012. The Order resulted from an Amended Statement of Charges, which Respondent did not contest, alleging that Respondent was a habitual user of alcohol, in violation of New York State Education Law § 6530(8). Pursuant to the terms of the Order, Respondent was made subject to three years stayed suspension of his license to practice medicine in New York, probation for a term of five years and other terms and conditions. Among the terms of probation were that Respondent remain drug and alcohol free.

B. During his probation, Respondent consumed alcohol in violation of the terms of probation.

**FIRST SPECIFICATION**

**VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

1. The facts in Paragraphs A and B.

DATE: September 29, 2016  
Albany, New York


  
MICHAEL A. HISER  
Deputy Counsel  
Bureau of Professional Medical Conduct

EXHIBIT "B"

- 1) The suspension of Respondent's license shall be terminated only after Respondent makes a showing to the satisfaction of a Committee on Professional Conduct (Committee) of the State Board for Professional Medical Conduct (Board) that Respondent has successfully complied with or successfully completed a course of therapy and ongoing evaluation and is no longer incapacitated for the practice as a physician, and a Committee makes a determination that Respondent is both fit and clinically competent to practice as a physician. Respondent shall provide the Office of Professional Medical Conduct (OPMC) with a proposed treatment plan for advice as to whether it is generally appropriate; however, the determination of successful compliance with or completion of a course of therapy, and the determination that Respondent is no longer incapacitated for the active practice as a physician, shall be made solely by the Committee.
- 2) After Respondent completes at least 18 months of suspension pursuant to the terms of this Consent Order, and upon Respondent's request which may be initiated after 6 months of suspension, a Committee shall be convened to hear and evaluate Respondent's showing, as set forth in paragraph 1 above. The Board will make reasonable attempts to convene a Committee within 90 days of Respondent's request (although in no event shall it be convened prior to completion of 18 months of suspension); however, Respondent's request shall not be perfected until the Director of OPMC receives all the required documentation, and complies with all the Conditions, set forth in paragraph 3 below. The Board shall determine the procedural nature of the proceeding through the exercise of the Director of OPMC's reasonable discretion upon consultation with Counsel, Bureau of Professional Medical Conduct (Counsel). Proceedings before a Committee shall not be in the nature of a hearing pursuant to N. Y. Pub. Health Law § 230, but shall instead be informal and intended only to address any facts, evidence, information, circumstances, or issues relating to the advisability of terminating Respondent's license suspension. The Committee shall be given access to evidence including, but not limited to:
  - a) Any evidence pertaining to Respondent's compliance with the conditions imposed.
  - b) Any evidence that the Director or Counsel deems appropriate.
- 3) Upon requesting that a Committee be convened, pursuant to paragraph 2, Respondent shall provide the Director of OPMC with the following:
  - a) The signed acknowledgment and curriculum vitae from the proposed sobriety monitor referred to in paragraph 5c.

- b) The signed acknowledgment and curriculum vitae from the proposed supervising physician referred to in paragraph 5d.
- c) The signed acknowledgment and curriculum vitae from the proposed health care professional referred to in paragraph 5e.
- d) Certified true and complete copies of all evaluation and treatment records relating to Respondent's substance abuse/dependence, psychological, psychiatric and/or mental health treatment, whether in an in-patient, out-patient, after-care or consultation setting; the certified records shall be forwarded directly to OPMC by the treatment providers, facilities and evaluators. The records shall reflect all treatment and evaluation provided, and shall include the results of all tests conducted to evaluate Respondent's fitness and clinical competence to practice medicine, whether the treatment, evaluation and testing occurred before, or while, the suspension was in effect.
- e) Documentation of Respondent's participation in the program(s) of the Committee for Physicians' Health of the Medical Society of the State of New York or other equivalent program(s). Documentation shall include but not be limited to verification of compliance and results of forensically valid alcohol/drug screening.
- f) Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § 290dd-3 and ee-3 and 42 C.F.R, Part 2.
- g) A current, independent, in-depth chemical dependency and psychiatric evaluation by a board-certified psychiatrist specializing in addiction medicine.
- h) Upon request of the Director of OPMC, Respondent shall attend, participate in and cooperate with an interview with designated personnel from the OPMC.

Provision of the documents listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

- 4) At least 14 days before the scheduled date of the proceeding referred to in paragraph 2, Respondent shall provide OPMC with the following:

a) Certified true and complete copies of records updating treatment and alcohol/drug screening since the date of the original submissions referred to in paragraph 3d.

b) Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician; this evidence shall include documentation of continuing medical education and, at the Director of OPMC's request, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the evidence listed in this paragraph shall not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a physician.

5) If the Chair of the Committee issues an Order finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore terminates the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to N.Y. Pub. Health Law § 230-a, during which Respondent's practice as a physician shall be subject to conditions imposed for a period of no less than five years. The minimum conditions shall include the following:

a) Respondent shall be required to comply with the terms of a continuing after-care treatment plan addressing the major problems associated with Respondent's illness.

b) At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board-certified psychiatrist or other licensed mental health practitioner designated by the Director. This practitioner shall report to the Director regarding Respondent's condition and Respondent's fitness or incapacity to practice as a physician.

c) Respondent's sobriety will be monitored by a health care professional proposed by Respondent and approved, in writing, by the Director of OPMC ("sobriety monitor"). The sobriety monitor shall not be a personal friend. The sobriety monitor shall be familiar with Respondent's history of chemical dependence, with this suspension and with the terms of probation to be set forth. The sobriety monitor shall acknowledge willingness to comply with the monitoring terms by executing the acknowledgment provided by OPMC.

i) Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent's



treatment by a licensed health care professional aware of Respondent's history of chemical dependency and mental illness. Respondent shall not self-prescribe any medications.

- ii) The sobriety monitor shall see Respondent at least twice during each month.
  - iii) The sobriety monitor shall direct Respondent to submit to unannounced tests of Respondent's blood, breath, hair, and/or urine for the presence of drugs or alcohol and shall report to OPMC within 24 hours if at any time a test is positive or is refused by Respondent. Respondent shall avoid all substances that may cause positive urine drug screens such as poppy seeds, mouthwash, cough medicine, etc. Any positive result shall be considered a violation of probation.
  - iv) The sobriety monitor shall report to OPMC any non-compliance with the imposed conditions.
  - v) Respondent shall ensure that the sobriety monitor submits quarterly reports to OPMC certifying Respondent's compliance, or detailing Respondent's failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.
- d) Respondent's medical practice shall be supervised by a licensed physician ("practice supervisor") proposed by Respondent and approved, in writing, by the Director of OPMC. The supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. The supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. The supervising physician shall be in a position to regularly observe and assess Respondent's medical practice. The supervising physician shall oversee Respondent's prescribing, administering, dispensing, inventorying and wasting of controlled substances. The supervising physician shall acknowledge willingness to comply with the supervision terms by executing the acknowledgment provided by OPMC.
- i) Respondent shall ensure that the supervising physician submits quarterly reports to OPMC regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying Respondent's compliance with each condition imposed, or detailing Respondent's failure to comply.

ii) The supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.

e) Respondent shall continue in treatment with a health care professional or program ("health care professional") proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.

i) Respondent shall ensure that the health care professional submits quarterly reports to OPMC certifying that Respondent is in compliance with treatment, or detailing Respondent's failure to comply.

ii) The health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan or demonstrates any significant pattern of absences.

iii) The health care professional shall acknowledge willingness to comply with the reporting requirements with respect to treatment by executing the acknowledgment provided by OPMC.

f) Licensee shall provide the Director of OPMC with, and ensure to keep current and effective, fully executed waivers of patient confidentiality concerning any prior or prospective evaluation and treatment records; these waivers shall comply with the requirements of federal confidentiality laws and regulations, including but not limited to: HIPAA, Public Law 104-191, et seq., and the laws governing confidentiality of substance abuse records, at 42 U.S.C. § 290dd-3 and ee-3 and 42 C.F.R. Part 2.

6) The terms set forth in paragraph 5 are the minimum probation terms related to fitness to practice to be imposed on Respondent upon the termination of Respondent's license suspension, and other terms may be added by the Committee. All compliance costs shall be Respondent's responsibility. Respondent's failure to comply with any condition imposed at the time of suspension termination may result in disciplinary action against Respondent with charges of professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law § 6530(29).

7) If a Committee denies a petition by Respondent for license suspension termination, Respondent shall be barred from requesting that a Committee be convened to hear a petition for license suspension termination for 9 months from the date of the denial.

8) In addition to the terms set out in paragraph 5, and any other terms added by the Committee, upon the termination of Respondent's license suspension, Respondent shall also be subject to the following standard terms of probation:

- a) Respondent's conduct shall conform to moral and professional standards of conduct and governing law.
- b) Any civil penalty not paid by Respondent by the prescribed date shall subject Respondent to all legal provisions pertaining to debt collection, including the imposition of interest, late payment charges and collection fees, referral of the debt to the New York State Department of Taxation and Finance for collection, and the non-renewal of permits or licenses. [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
- c) The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- d) Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to a review of office records, patient records, hospital charts, and/or electronic records, as well as interviews and/or periodic visits with Respondent and staff at practice locations or OPMC offices.
- e) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- f) Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations regarding controlled substances.

g) Respondent shall comply with this Consent Order and all its terms, conditions, restrictions, limitations and penalties and shall be responsible for all associated compliance costs. Upon receiving evidence of non-compliance with the Consent Order, or any violation of its terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any other proceeding against Respondent authorized by law.

EXHIBIT "C"

Requirements for Closing a Medical Practice Following a  
Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

EXHIBIT "C"

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges

of which the Licensee is found guilty, and may include revocation of a suspended license.